


**OFFICE OF GENERAL COUNSEL
CITY OF JACKSONVILLE
117 WEST DUVAL STREET
SUITE 480
JACKSONVILLE, FL 32202
PHONE: (904) 255-5050**



LEGAL MEMORANDUM

TO: The Honorable Lori Hershey, Chairwoman, Duval County School Board
Dr. Diana L. Greene, Superintendent

CC: Honorable Duval County School Board Members

FROM: Jason R. Gabriel, General Counsel 

RE: Outside Legal Counsel

DATE: August 28, 2019

On July 23, 2019, I delivered a memorandum to you discussing City law regarding the hiring of outside counsel with respect to the School Capital Outlay Sales Surtax matter. The memorandum is attached here for ease of reference. I learned today that at your meeting, the School Board approved action to hire outside counsel. This action was undertaken after not only the advice given in the referenced memorandum but after advice from your designated School Board attorney, Karen Chastain, that such action requires coordination and approval by my office, and that any institution of litigation requires approval by City Council.¹ More importantly, this action was undertaken in violation of the City Ordinance Code and City Charter.

To summarize:

1. As held by the General Counsel in Opinion 97-1, an independent agency is not authorized to hire outside counsel to challenge a General Counsel opinion or opinions of the office.
2. The School Board is required by City Charter Article 13, Section 13.09 to use the Office of General Counsel and may not hire or engage any other legal counsel without coordination and approval by my office. As a reminder, the Charter is the product of the power

¹ This is putting aside for now the discussion of *when* it is appropriate for the institution of inter-governmental litigation and whether such litigation is ever appropriate when based on matters of law versus matters of fact.

vested in the Legislature by the Florida Constitution, with the Charter taking its current form pursuant to Chapter 92-341, Laws of Florida and subsequent Charter amendments. Consistent with the Charter, the Florida Supreme Court has explicitly recognized the Legislature's authority to regulate the relationship of public bodies with their attorneys.

3. Hiring outside counsel in violation of the Charter or Ordinance Code will not create a lawful attorney-client relationship; no purported contract or arrangement creates such a relationship; and no attorney-client privilege attaches. Neither the City Council nor the Office of General Counsel consents to such representation.

4. Because any such purported contract or arrangement between the School Board and an attorney is *ultra vires* and *void*, any fees or expenses paid via such purported contract or arrangement would be an unauthorized expenditure of public funds subject to Subpart C, Part 3, Chapter 106 of the Ordinance Code and Section 108.105, Ordinance Code, which includes personal liability of those authorizing such expenditures.


Based on the foregoing, the purported action and vote of the School Board today with respect to this matter is a violation of the City Charter and Ordinance Code. I respectfully request that you immediately cease and desist from any further engagement and that all actions taken be clarified for the record as having been retracted. Instead, I would respectfully urge that the School Board and the City Council attempt to resolve this matter amicably within the framework of the Consolidated Government. I remain available to assist with any lawful course of action the School Board wishes to take.

**OFFICE OF GENERAL COUNSEL
CITY OF JACKSONVILLE
117 WEST DUVAL STREET, SUITE 480
JACKSONVILLE, FL 32202
PHONE: (904) 255-5050**



LEGAL MEMORANDUM

To: Ms. Lori Hershey, Chairwoman, Duval County School Board
Dr. Diana L. Greene, Superintendent

From: Jason R. Gabriel, General Counsel 

Re: Outside Legal Counsel

Date: July 23, 2019

It has come to my attention, via a public notice yesterday evening, that the Duval County School Board (“DCSB”) intends to hold an emergency meeting to discuss “hiring independent legal counsel” today, Tuesday July 23. The Chairwoman of the Board had previously set a meeting with me that is scheduled to take place Wednesday July 24, to discuss what I presume to be the same topic (among other things).

I am unsure of what action (if any) the DCSB intends to take today, as no one has discussed the matter with me to date, so I wanted to take the opportunity to provide counsel with respect to the topic of engaging any counsel beyond that of the Office of General Counsel (“Office”).

The DCSB’s chief legal officer is the General Counsel, and any assistant general counsel may be assigned to the DCSB by the General Counsel to counsel the DCSB. As you know we have done just that, with the attorneys and staff member that are expressly dedicated to the DCSB, in addition to the other lawyers and staff at the Office that provide counsel and services for a variety of matters related to the DCSB.

From time to time, (e.g., due to some novel area of the law that requires specified legal expertise and the like) there very well may be the need to engage outside counsel for certain matters. In those circumstances, the DCSB discusses and coordinates with the General Counsel for such potential engagement(s). All legal service requests for outside counsel for the entire consolidated government go through, and must be approved by, the General Counsel.

Section 7.01, of the Charter states, in pertinent part: “The General Counsel may authorize the independent agencies¹ to engage outside counsel upon certification by the General Counsel of compliance [1] with the Charter and [2] with the agency’s authority, and [3] a finding of

¹ The DCSB is expressly established as an independent agency of the City of Jacksonville pursuant to Section 18.07, Charter.

necessity by the General Counsel.” If the School Board seeks to hire outside counsel, I will undertake the review required of me by the Charter.

Section 7.02 dictates that the General Counsel serve as the DCSB’s chief legal counsel with the final authority to resolve or interpret any legal issue relative to the entire consolidated government. Regardless of such engagements for the benefit of the City or an independent agency, the General Counsel’s binding legal authority and its responsibility of overseeing the hiring of any outside counsel for an independent agency are two sides of one coin with intertwined purposes. As the chief legal officer of the Consolidated Government, the General Counsel takes a unitary position on any legal issue and takes the same legal position for each officer, agency, and employee of the Consolidated Government. The General Counsel cannot give differing legal opinions on a legal issue depending upon which officer, agency, or employee asks the question.

Just as the General Counsel may not take inconsistent positions, once the General Counsel has issued an opinion, the binding nature of that opinion prohibits any agency, officer, or employee from engaging counsel to take an inconsistent position. Using the language of the Charter, no officer, agency, or employee can demonstrate the “need” to hire outside counsel if the purpose of that outside counsel is to take a legal position inconsistent with the General Counsel’s binding legal opinion. In General Counsel Opinion 97-1, it was set forth that “[N]o Charter authorization exists that would allow the Mayor to obtain independent legal counsel to challenge the General Counsel’s determination,” i.e., legal opinion. The same holds true for a General Counsel opinion concerning the powers of any officer or agency of the Consolidated Government.

As to the current issue – the School Capital Outlay Sales Surtax – and the respective roles of the City Council and the DCSB, I have been asked to issue a binding legal opinion. This is an opportunity to provide more elaboration as to those roles and a legal path forward as to this public policy decision. As such, my plan is to do so expeditiously, and am committing to having an opinion ready by the next City Council meeting on August 13, 2019. Furthermore, as an added measure, I am going to request that the City Council pass an emergency resolution at that meeting to forward the opinion to the Attorney General² for the State of Florida to also weigh in on the matter.

I look forward to further discussing this matter at our meeting tomorrow July 24, 2019.

Please contact me with any questions or concerns.

Thank you.

GC-#1295851-v1-Memo to DCSB 7-23-19.docx

GC-#1295943-v1-Memo to DCSB 7-23-19.pdf

² Requests for opinions from the Attorney General for the State of Florida require that the Office of General Counsel provide a memorandum on behalf of the requesting agency. The memorandum must include the opinion of the Office of General Counsel, a discussion of the legal issues involved, together with references to relevant constitutional provisions, statutes, charter, administrative rules, judicial decisions, etc. Accordingly, any and all such requests must be coordinated through, opined on and approved by the Office of General Counsel prior to submission to the Attorney General.